

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

CHAPTER LXXVI

RAPE

750.520 Repealed. 1974, Act 266, Eff. Apr. 1, 1975.

Compiler's note: The repealed section pertained to acts of carnal knowledge constituting a felony, the penalties therefor, and the proof thereof.

750.520a Definitions.

Sec. 520a. As used in this chapter:

- (a) "Actor" means a person accused of criminal sexual conduct.
- (b) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets all of the following criteria:
 - (i) It originated before the person became 18 years of age.
 - (ii) It has continued since its origination or can be expected to continue indefinitely.
 - (iii) It constitutes a substantial burden to the impaired person's ability to perform in society.
 - (iv) It is attributable to 1 or more of the following:
 - (A) Mental retardation, cerebral palsy, epilepsy, or autism.
 - (B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.
- (c) "Electronic monitoring" means that term as defined in section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285.
- (d) "Intermediate school district" means a corporate body established under part 7 of the revised school code, 1976 PA 451, MCL 380.601 to 380.705.
- (e) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
- (f) "Mental health professional" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
- (g) "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (h) "Mentally disabled" means that a person has a mental illness, is mentally retarded, or has a developmental disability.
- (i) "Mentally incapable" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (j) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.
- (k) "Mentally retarded" means significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior.
- (l) "Nonpublic school" means a private, denominational, or parochial elementary or secondary school.
- (m) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
- (n) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
- (o) "Public school" means a public elementary or secondary educational entity or agency that is established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.
- (p) "School district" means a general powers school district organized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.
- (q) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:
 - (i) Revenge.
 - (ii) To inflict humiliation.

(iii) Out of anger.

(r) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(s) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1983, Act 158, Eff. Mar. 29, 1984;—Am. 2000, Act 505, Eff. Mar. 28, 2001;—Am. 2002, Act 714, Eff. Apr. 1, 2003;—Am. 2006, Act 171, Eff. Aug. 28, 2006;—Am. 2007, Act 163, Eff. July 1, 2008.

Constitutionality: The provision in the criminal sexual conduct statute which permits elevation of a criminal sexual conduct offense from a lesser to a higher degree on the basis of proof of personal injury to the victim in the form of mental anguish is not unconstitutionally vague. People v Petrella, 424 Mich 221; 380 NW2d 11 (1985).

Compiler's note: Section 2 of Act 266 of 1974 provides:

"Saving clause.

"All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

750.520b Criminal sexual conduct in the first degree; felony; consecutive terms.

Sec. 520b. (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related to the victim by blood or affinity to the fourth degree.

(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.

(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).

(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the first degree is a felony punishable as follows:

(a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years.

(b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.

(c) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age.

(d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n.

(3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1983, Act 158, Eff. Mar. 29, 1984;—Am. 2002, Act 714, Eff. Apr. 1, 2003;—Am. 2006, Act 165, Eff. Aug. 28, 2006;—Am. 2006, Act 169, Eff. Aug. 28, 2006;—Am. 2007, Act 163, Eff. July 1, 2008.

Constitutionality: The provision in the criminal sexual conduct statute which permits elevation of a criminal sexual conduct offense from a lesser to a higher degree on the basis of proof of personal injury to the victim in the form of mental anguish is not unconstitutionally vague. People v Petrella, 424 Mich 221; 380 NW2d 11 (1985).

Compiler's note: Section 2 of Act 266 of 1974 provides:

"Saving clause.

"All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

750.520c Criminal sexual conduct in the second degree; felony.

Sec. 520c. (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related by blood or affinity to the fourth degree to the victim.

(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.

(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

- (i) The actor is related to the victim by blood or affinity to the fourth degree.
- (ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
- (i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.
- (j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.
- (k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.
- (l) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

(2) Criminal sexual conduct in the second degree is a felony punishable as follows:

- (a) By imprisonment for not more than 15 years.
- (b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1983, Act 158, Eff. Mar. 29, 1984;—Am. 2000, Act 227, Eff. Oct. 1, 2000;—Am. 2002, Act 714, Eff. Apr. 1, 2003;—Am. 2006, Act 171, Eff. Aug. 28, 2006;—Am. 2007, Act 163, Eff. July 1, 2008.

Compiler's note: Section 2 of Act 266 of 1974 provides:

“Saving clause.

“All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

750.520d Criminal sexual conduct in the third degree; felony.

Sec. 520d. (1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

- (a) That other person is at least 13 years of age and under 16 years of age.
- (b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).
- (c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.
- (e) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:
 - (i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.
 - (ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.
- (f) That other person is at least 16 years old but less than 26 years of age and is receiving special education

services, and either of the following applies:

(i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1983, Act 158, Eff. Mar. 29, 1984;—Am. 1996, Act 155, Eff. June 1, 1996;—Am. 2002, Act 714, Eff. Apr. 1, 2003;—Am. 2007, Act 163, Eff. July 1, 2008.

Compiler's note: Section 2 of Act 266 of 1974 provides:

"Saving clause.

"All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

750.520e Criminal sexual conduct in the fourth degree; misdemeanor.

Sec. 520e. (1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor achieves the sexual contact through concealment or by the element of surprise.

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. A prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent.

(f) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:

(i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school,

nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(g) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

(i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1983, Act 158, Eff. Mar. 29, 1984;—Am. 1988, Act 86, Eff. June 1, 1988;—Am. 1994, Act 213, Eff. Oct. 1, 1994;—Am. 1996, Act 155, Eff. June 1, 1996;—Am. 2000, Act 227, Eff. Oct. 1, 2000;—Am. 2000, Act 505, Eff. Mar. 28, 2001;—Am. 2002, Act 714, Eff. Apr. 1, 2003;—Am. 2007, Act 163, Eff. July 1, 2008.

Compiler's note: Section 2 of Act 266 of 1974 provides:

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"All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

750.520f Second or subsequent offense; penalty.

Sec. 520f. (1) If a person is convicted of a second or subsequent offense under section 520b, 520c, or 520d, the sentence imposed under those sections for the second or subsequent offense shall provide for a mandatory minimum sentence of at least 5 years.

(2) For purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has at any time been convicted under section 520b, 520c, or 520d or under any similar statute of the United States or any state for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975.

Compiler's note: Section 2 of Act 266 of 1974 provides:

"Saving clause.

"All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

750.520g Assault with intent to commit criminal sexual conduct; felony.

Sec. 520g. (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years.

(2) Assault with intent to commit criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 5 years.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975.

Compiler's note: Section 2 of Act 266 of 1974 provides:

"Saving clause.

"All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

750.520h Corroboration of victim's testimony not required.

Sec. 520h. The testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975.

Compiler's note: Section 2 of Act 266 of 1974 provides:

"Saving clause.

"All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

750.520i Resistance by victim not required.

Sec. 520i. A victim need not resist the actor in prosecution under sections 520b to 520g.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975.

Compiler's note: Section 2 of Act 266 of 1974 provides:

“Saving clause.

“All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

750.520j Evidence of victim's sexual conduct.

Sec. 520j. (1) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted under sections 520b to 520g unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) Evidence of the victim's past sexual conduct with the actor.

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

(2) If the defendant proposes to offer evidence described in subsection (1)(a) or (b), the defendant within 10 days after the arraignment on the information shall file a written motion and offer of proof. The court may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1). If new information is discovered during the course of the trial that may make the evidence described in subsection (1)(a) or (b) admissible, the judge may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1).

History: Add. 1974, Act 266, Eff. Apr. 1, 1975.

Constitutionality: This section, the rape-shield law, is not unconstitutional. *People v Arenda*, 416 Mich 1; 330 NW2d 814 (1982).

In *Michigan v Lucas*, 500 US 145; 111 S Ct 1743; 114 L Ed2d 205 (1991), the United States Supreme Court held that the Michigan Court of Appeals had erred in adopting a “per se rule” that the notice-and-hearing requirement of Michigan's rape-shield law violated the Sixth Amendment to the United States Constitution in all cases where it was used to preclude evidence of past sexual conduct between a rape victim and a defendant (see *People v Lucas*, 160 Mich App 692; 408 NW2d 431 (1987)). The Court found that the statute “serves legitimate state interests in protecting against surprise, harassment, and undue delay. Failure to comply with this requirement may ... justify even the severe sanction of preclusion.”

Compiler's note: Section 2 of Act 266 of 1974 provides:

“Saving clause.

“All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

750.520k Suppression of names and details.

Sec. 520k. Upon the request of the counsel or the victim or actor in a prosecution under sections 520b to 520g the magistrate before whom any person is brought on a charge of having committed an offense under sections 520b to 520g shall order that the names of the victim and actor and details of the alleged offense be suppressed until such time as the actor is arraigned on the information, the charge is dismissed, or the case is otherwise concluded, whichever occurs first.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975.

Constitutionality: The statute authorizing suppression of a court file containing the name of a victim of criminal sexual conduct, the name of the defendant, and the details of the offense until the defendant is arraigned, the charge is dismissed, or the case is otherwise concluded is not a prior restraint upon publication, but a valid legislative restriction on the common-law right of access to public records and the statutory right of access to court proceedings. In re *Midland Publishing*, 420 Mich 148; 362 NW2d 580 (1984).

Compiler's note: Section 2 of Act 266 of 1974 provides:

“Saving clause.

“All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

750.520l Legal spouse as victim.

Sec. 520l. A person may be charged and convicted under sections 520b to 520g even though the victim is his or her legal spouse. However, a person may not be charged or convicted solely because his or her legal spouse is under the age of 16, mentally incapable, or mentally incapacitated.

History: Add. 1974, Act 266, Eff. Apr. 1, 1975;—Am. 1988, Act 138, Imd. Eff. June 1, 1988.

Compiler's note: Section 2 of Act 266 of 1974 provides:

“Saving clause.

“All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act.”

Section 2 of Act 138 of 1988 provides: “This amendatory act shall take effect June 1, 1988 and apply to crimes committed on or after that date.”

750.520m DNA identification profiling; chemical testing; manner of collecting and transmitting samples; existing DNA identification profile; disclosure; assessment; report; definitions.

Sec. 520m. (1) A person shall provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and shall provide samples for chemical testing if any of the following apply:

(a) The individual is arrested for a violent felony as that term is defined in section 36 of the corrections code of 1953, 1953 PA 232, MCL 791.236.

(b) The person is found responsible for a violation of section 83, 91, 316, 317, or 321, a violation or attempted violation of section 349, 520b, 520c, 520d, 520e, or 520g, or a violation of section 167(1)(c) or (f) or 335a, or a local ordinance substantially corresponding to section 167(1)(c) or (f) or 335a.

(c) The person is convicted of a felony or attempted felony, or any of the following misdemeanors, or local ordinances that are substantially corresponding to the following misdemeanors:

(i) A violation of section 145a, enticing a child for immoral purposes.

(ii) A violation of section 167(1)(c), (f), or (i), disorderly person by window peeping, engaging in indecent or obscene conduct in public, or loitering in a house of ill fame or prostitution.

(iii) A violation of section 335a, indecent exposure.

(iv) A violation of section 451, first and second prostitution violations.

(v) A violation of section 454, leasing a house for purposes of prostitution.

(vi) A violation of section 462, female under the age of 17 in a house of prostitution.

(2) Notwithstanding subsection (1), if at the time the person is arrested for, convicted of, or found responsible for the violation the investigating law enforcement agency or the department of state police already has a sample from the person that meets the requirements of the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, the person is not required to provide another sample or pay the fee required under subsection (6).

(3) The county sheriff or the investigating law enforcement agency shall collect and transmit the samples in the manner required under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176. However, a sample taken under subsection (1)(a) may be transmitted to the department of state police upon collection.

(4) An investigating law enforcement agency, prosecuting agency, or court that has in its possession a DNA identification profile obtained from a sample of a person under subsection (1) shall forward the DNA identification profile to the department of state police at or before the time of the person's sentencing or disposition upon that conviction or finding of responsibility unless the department of state police already has a DNA identification profile of the person.

(5) The DNA profiles of DNA samples received under this section shall only be disclosed as follows:

(a) To a criminal justice agency for law enforcement identification purposes.

(b) In a judicial proceeding as authorized or required by a court.

(c) To a defendant in a criminal case if the DNA profile is used in conjunction with a charge against the defendant.

(d) For an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications are removed.

(6) Until October 1, 2003, the court shall order each person found responsible for or convicted of 1 or more crimes listed in subsection (1) to pay an assessment of \$60.00. The assessment required under this subsection is in addition to any fine, costs, or other assessments imposed by the court.

(7) An assessment required under subsection (6) shall be ordered upon the record, and shall be listed separately in the adjudication order, judgment of sentence, or order of probation.

(8) After reviewing a verified petition by a person against whom an assessment is imposed under subsection (6), the court may suspend payment of all or part of the assessment if it determines the person is unable to pay the assessment.

(9) The court that imposes the assessment prescribed under subsection (6) may retain 10% of all assessments or portions of assessments collected for costs incurred under this section and shall transmit that money to its funding unit. On the last day of each month, the clerk of the court shall transmit the assessments

or portions of assessments collected under this section as follows:

(a) Twenty-five percent to the county sheriff or other investigating law enforcement agency that collected the DNA sample as designated by the court to defray the costs of collecting DNA samples.

(b) Until October 1, 2003, 65% to the department of treasury for the department of state police forensic science division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(c) Beginning October 1, 2003, 65% to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(10) Beginning December 31, 2002, the director of the department of state police shall report by December 31 of each year concerning the rate of DNA sample collection, DNA identification profiling, retention and compilation of DNA identification profiles, and the collection of assessments required under subsection (6) to all of the following:

(a) The standing committees of the senate and house of representatives concerned with DNA sample collection and retention.

(b) The house of representatives appropriations subcommittee on state police and military affairs.

(c) The senate appropriations subcommittee on state police.

(11) As used in this section:

(a) "DNA identification profile" and "DNA identification profiling" mean those terms as defined in section 2 of the DNA identification profiling system act, 1990 PA 250, MCL 28.172.

(b) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the offense for which the person is convicted. Investigating law enforcement agency includes the county sheriff but does not include a probation officer employed by the department of corrections.

(c) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.

(d) "Sample" means a portion of a person's blood, saliva, or tissue collected from the person.

History: Add. 1990, Act 191, Eff. Oct. 1, 1991;—Am. 1994, Act 163, Eff. Sept. 1, 1994;—Am. 1996, Act 510, Imd. Eff. Jan. 9, 1997;—Am. 2001, Act 89, Eff. Jan. 1, 2002;—Am. 2003, Act 100, Eff. Oct. 1, 2003;—Am. 2008, Act 380, Eff. July 1, 2009.

750.520n Lifetime electronic monitoring.

Sec. 520n. (1) A person convicted under section 520b or 520c for criminal sexual conduct committed by an individual 17 years old or older against an individual less than 13 years of age shall be sentenced to lifetime electronic monitoring as provided under section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285.

(2) A person who has been sentenced under this chapter to lifetime electronic monitoring under section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285, who does any of the following is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both:

(a) Intentionally removes, defaces, alters, destroys, or fails to maintain the electronic monitoring device in working order.

(b) Fails to notify the department of corrections that the electronic monitoring device is damaged.

(c) Fails to reimburse the department of corrections or its agent for the cost of the monitoring.

(3) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

(4) A term of imprisonment imposed for a violation of this section may run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

History: Add. 2006, Act 171, Eff. Aug. 28, 2006.